IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6831 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M S UNIVERSITY

Versus

VELJIBHAI D MOCHI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR BHUSHAN B OZA for Respondent No. 1

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: /02/2001

C.A.V. JUDGEMENT

The present petition is filed by Maharaja

Sayajirao University, Vadodara (hereinafter referred to as "the University") under Articles 226 and 227 of the Constitution of India challenging the judgement and order dated 12.7.1999 passed by the Gujarat Universities Services Tribunal at Ahmedabad (hereinafter referred to as "the Tribunal") in Application No.3 of 1999, whereby the Tribunal held that the decision of the Syndicate of the University of not accepting recommendations made by the Selection Committee vide item no.18 in its meeting dated 26.11.1998 is wrong, unlawful and otherwise unjustified. The Tribunal has set aside the same. The Tribunal further observed that,

> "It appears from the record of the case that vide order dated 16.3.1999 this Tribunal directed the University not to fill up one post in question in the interest of justice which is admittedly the post of Dy. Registrar belonging to "open category". There is no dispute that the said post is still vacant. In that case of the circumstances, opponent University is hereby directed to consider the recommendation of the Selection Committee de novo by which the applicant for the post of Dy Registrar (open category) is selected, through its Syndicate and to arrive at the decision as early as possible, preferably in the next meeting of the Syndicate from today. It is further directed that if the decision is against the applicant, the same will disclose the reasons in terms in black and white and the same will be communicated to the applicant in black and white. The interim relief, which is in force by which University is directed not to fill up the post in question, will remain in force upto 10 days after the applicant herein is intimated about the decision of the Syndicate which it has to take de novo in connection of this order."

By the aforesaid order the application was allowed by the Tribunal.

2. The University challenged the aforesaid order/ judgement of the Tribunal on the ground that the Tribunal had no jurisdiction to entertain the matters relating to process of appointment/ selection as unless and until actual appointment is made, no question relating to prejudice of service conditions would arise. It was also contended that in view of the provisions of section 8 of the Gujarat Universities Services Tribunal Act, 1983 (hereinafter referred to as "the Act") only those

disputes between the University and University employees, which are connected with the conditions of service of the university employees can be decided by the Tribunal. It was also contended that the judgement and order of the Tribunal was not within the jurisdiction, conferred upon the Tribunal by the Statute.

3. Learned advocate appearing for the petitioner University submitted the following facts:

An advertisement was given inviting applications for various posts including the post of Deputy Registrar (one post: scheduled tribe and one post: general). The present dispute is about open category post of the Deputy Registrar. The respondent who was serving at the relevant point of time as an Office Superintendent with the University had also applied for the post of Deputy Registrar. It was also pointed out that the respondent belongs to scheduled caste. It was also submitted by learned advocate for the University that the appointing authority for the aforesaid post in view of the provisions of section 24 of the Act is Syndicate. However, for the purpose of carrying out the selection process, a committee is constituted which after due selection process sends its recommendations. In the present case, the selection committee recommended the name of the respondent for the post of Deputy Registrar (open category). The recommendations made by the Selection Committee qua the respondent were put on the agenda at serial no.18 before the Syndicate in its meeting dated 26.11.1998. The Minutes of the aforesaid meeting are at Annexure 'C' to the petition and for ready perusal item no.18 of the agenda and Resolution passed therein is produced in para 4 (iii), which is reproduced hereunder fore ready reference:

"18. Consideration of the recommendation of the Selection Committee appointed by the Vice Chancellor as authorized under S.R. No.33 dated 18.4.98 held in the University Office on Wednesday the 11th November 1998 to select candidate for the post of Dy Registrar in the University Office.

Resolved that the recommendation of the Selection Committee held on 11.1.98 to recommend candidate for the post of Dy Registrar in the University Office be not accepted and that the post be readvertised."

4. It is submitted by learned counsel appearing for

the University that the action of the Syndicate was challenged by the respondent by resorting to "Dharna and other pressurising tactics". It is also submitted that the respondent resorted to allegations of vindictiveness in support of which he did not have anything to produce. As the respondent did not succeed in his efforts as aforesaid, the respondent addressed a letter dated 19.2.1999 to the Tribunal. Said letter was entertained by the Tribunal as an application and an order was passed on 22.2.1999. A copy of said letter is produced at Annexure 'E' to this petition. The Tribunal ordered to issue notice to the applicant (present respondent) as well as the University, returnable on 16.3.1999 by Registered Post A.D. The Tribunal also directed the applicant to file a proper application before the Tribunal in the form in which it is necessary, on the returnable date. The Tribunal also directed the Registrar of the University to submit true facts before the Tribunal in black and white in connection of the letter without waiting for a proper application being filed by the applicant before the Tribunal. A copy of letter was also enclosed along with all annexures without fail. The Tribunal also ordered that,

> "This being an interim order ample time is granted. The opponent University does not put the same in black and white. It is made clear that the same will entitle the applicant for reasonable cost to be paid by the University."

5. Learned advocate for the University contended that the action on the part of the Tribunal of taking cognisance of such a letter was without jurisdiction inasmuch as the Tribunal is a creation of a statute and does not have powers similar to that of this Court or the Honorable the Supreme Court of India, which alone can have this privilege of taking cognisance of a letter in this manner.

6. Learned advocate for the University placed reliance on the judgement in the matter of the Managing Trustee v. Mahanbhai R. Bhangi, reported in 2000 (1) GLH 180. The contention raised by learned advocate for the University was that this Court has held in the aforesaid matter, while dealing with the provisions of sec.38 of the Gujarat Secondary Education Act, 1972, that the language of the section presupposes that the dispute should be between a person in service of the school or institution against which the person seeks to raise a dispute. Learned advocate contended that this Court has come to the conclusion that a person not in service

cannot approach the Tribunal under sec.38 with a prayer to seek direction against the management to give an appointment order. Section 38(1) of the Gujarat Secondary Education Act, 1972 reads as under:

> "38(1) Where there is any dispute or difference between the manager of a registered private secondary school and any person in service of such school as head master, a teacher or a member of non teaching staff, which is connected with the conditions of service of such person, the manager or, as the case may be, the person may make an application to the Tribunal for the decision of the dispute."

He further contended that this Court has held such protection cannot be granted by the Tribunal as it has no jurisdiction to do so as there is no contract of employment between the parties as there was no offer made by the employer. Learned advocate submitted that the language of section 38 of the Gujarat Secondary Education Act, 1972 is perimateria with section 8 of the Gujarat Universities Services Tribunal Act, 1983 :

> "Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University employee, the University or, as the case may be, the University employee may make an application to the Tribunal for the decision of the dispute."

In the present case also it is not in dispute that the respondent had applied for direct recruitment to the post of Deputy Registrar and therefore, it cannot be said that the respondent was in service of the University so far as the post in question and the dispute regarding the same is concerned. That being so I do not find any reason to disagree with the proposition of law laid down by this Court in the aforesaid judgement.

In the aforesaid decision this Court has also considered a decision of this Court in the matter of Vinodkumar Hematram Dave v. Secondary Education Tribunal and others, reported in 21 GLR 573. In that case as discussed in para 15 of the aforesaid judgement it was held that in the facts and circumstances of the case, the Tribunal had jurisdiction. Even taking into consideration the facts of the said case the same have no similarity of the present case and therefore, it cannot

be said that in the present case the Tribunal had any jurisdiction.

7. It is submitted that the respondent herein then preferred an application in the prescribed format on 7.3.1999 and though the said application was not in proper format, the Tribunal has held the same to be in proper format. Learned advocate for the University has contended that as the matter pertains to a fresh appointment on the post of Deputy Registrar, the Tribunal had no jurisdiction to decide the matter and that the Tribunal has erred in coming to conclusion that the Tribunal had jurisdiction to decide the matter as the respondent herein was already in employment of the University. It was also submitted by learned counsel appearing for the University that the Tribunal has erred in directing the Syndicate to consider the recommendations of the Selection Committee de novo and arrive at a decision in the next meeting of the Syndicate and shall give/ disclose reasons in terms in black and white for its decision which will be communicated to the respondent. The Tribunal has also erred in granting interim relief in the nature of not filling up one post of Deputy Registrar upto 10 days after the University intimates decision of the Syndicate to the respondent.

8. Learned advocate appearing for the University submitted that section 23 of the Maharaja Sayajirao University of Baroda Act, 1949 provides for Syndicate. Subsection (1) of section 23 says that,

"23(1) The Syndicate shall be the executive authority of the University."

While subsection (2) provides for composition of the Syndicate. For ready perusal it is reproduced below:

"23(2) The Syndicate shall consist of:-

(i) The Vice Chancellor, ex officio;
(ii) The Pro Vice Chancellor, ex officio;
(iii) The Director of Higher Education and if he is unable to attend, the officer designated under clause (i) of paragraph (B) of Class I of subsection (1) of section 18;

(iv) The Director of Technical Education, and if he is unable to attend, the officer designated under clause (ii) of paragraph (B) of Class I of subsection 91) of section 18;

(v) The Director of Health and Medical Services and Medical Education, and if he is unable to attend, the officer designated under clause (iii) of paragraph (B) of Class I of subsection 91) of section 18;

(vi) Two Deans of Faculties elected by the Senate from amongst its members who are the Deans of Faculties, in the manner specified in Statutes;

(vii) One professor of the University to be nominated by the Vice Chancellor, from amongst such professor who are not members of the Senate;

(viii) One Principal of the constituent college by the Senate from amongst the Principals of the constituent colleges in the manner specified in the Statutes;

(ix) Six persons elected by the Senate from amongst its members who are neither teachers nor employees nor students of the University or of the college;

(x) One Head of Department elected by the Heads of Departments from amongst themselves inthe manner specified in the Statutes;

(xi) Five teachers of the University other than Deans, Heads of Departments and principals of the constituent colleges to be elected by the Senate from amongst its members inthe manner specified inthe Statutes;

(xii) Four persons nominated by the State Government from amongst distinguished educationists, teachers, social workers and such other class of persons irrespective of whether they are members of the Senate."

9. Learned advocate appearing for the University submitted that the Statute 62 to 68 of Schedule IV pertain to conduct of business of the Syndicate wherein it is specifically provided that all questions shall be decided by majority of votes of members present as far as Syndicate is concerned. The conclusion arrived at by the Tribunal that the Syndicate ought to have granted reasons for not accepting recommendations of the Selection Committee will amount to asking the members of the Syndicate to give reasons while exercising their right to

vote. It was also submitted that the Tribunal has erred in coming to the conclusion that the respondent was having a right to be appointed once he is selected by the Selection Committee without appreciating that the Selection Committee's job was over the moment it had placed its recommendations before the Syndicate. Thereafter, it was in the exclusive domain of the Syndicate to accept or not to accept the recommendations made by the Selection Committee.

10. On the other hand learned counsel appearing for the respondent submitted that the judgement and order passed by the Tribunal is in proper exercise of its jurisdiction under sec.8 of the Act. It was contended that the case of the respondent squarely falls within the jurisdiction of the Tribunal and the Tribunal was right in deciding the matter. It was next submitted that the Tribunal though a creation of the Statute is a court within the meaning of sec.3 of the Indian Evidence Act and can treat a letter by an aggrieved party as an application. It is also submitted that what is important is the substance of the letter and not format. Besides the respondent had presented a formal application also as per the direction of the Tribunal. It was also submitted that every court has statutory and constitutional responsibilities entrusted to it and is required to administer justice not only in letter but also in spirit. It was also submitted that the officers of the petitioner University are in the habit of making false and baseless allegations against the respondent. It was then submitted that the respondent is unable to have a fair and experienced lawyer and mere formalities be not allowed to be detrimental to the interest of the underprivileged section of the society so as to be hindrance in achieving distributive justice. It was also contended that the Tribunal was right in exercising jurisdiction under sec.8 of the Act inasmuch as the present dispute is a dispute between the University and the respondent, who is its employee and their dispute relates to the service conditions and the term, "Conditions of Service" includes avenues to have better prospects in the service, either by promotion or by direct recruitment.

11. Learned counsel appearing for the respondent submitted that the Syndicate was under an obligation to give reasons for rejecting recommendations of the Selection Committee to ensure transparency. It was also contended that it is decided by catena of decisions of the Honorable the Supreme Court that the executive functions cannot be discharged in an arbitrary manner and

at sweet will of the executive authority and they must meet the test of Article 14 of the Constitution. It was also submitted that the Tribunal is not only competent but is required to direct the Syndicate to give reasons in appropriate cases. The counsel then submitted that the petitioner University has tried to distort the order of the Tribunal by misinterpreting the same to the effect that the same is in nature of asking for the reasons from the members of the Syndicate before they exercise their right of vote. It was also contended that the respondent had a right to be appointed, once he was selected unless and until there is cogent, valid and legal reasons, justifying denial of such appointment.

12. Learned counsel for the respondent submitted that assuming without admitting that the Tribunal had no jurisdiction to entertain the letter written by the respondent, this Court under Article 226 of the Constitution can always directly interfere with the action of the University and can grant relief of exercising extraordinary jurisdiction. Learned counsel for the respondent relied upon the judgement in the case of Dhari Gram Panchayat v. Saurashtra Mazdoor Mahajan Sangh and another, (1987) 4 SCC 213, wherein the Honorable Supreme Court has observed as under:

> " .. .. We do not propose to express any opinion on this question since we are of the view that, on the finding that the action of the Panchayat was mala fide, the High Court could have directly interfered with the retrenchment of the workmen under Article 226 of the Constitution if the workmen had straightway approached the court without raising an industrial dispute. Merely because they raised an industrial dispute and the Labour Court took the view that the Octroi Department was not an industry, the workmen are not disentitled to the relief ultimately given to them by the High Court. We, therefore, uphold the judgement of the High Court. .. .."

The decision of the Honorable the Supreme Court is not of any assistance to the respondent inasmuch as this Court is not deciding this matter on the point as to whether the Tribunal had jurisdiction or not. The present petition is decided on the point as to whether the Tribunal is right in holding that the Syndicate was under an obligation to give reasons for not accepting the recommendations of the Selection Committee. This Court is of the opinion that the Tribunal has erred in coming

to the conclusion that the Syndicate was bound to give reasons for not accepting recommendations of the Selection Committee and therefore, this judgement does not take the case of the petitioner any further.

13. After taking into consideration the rival contentions of both the sides and on perusal of the judgement and order dated 12.7.1999 wherein the Tribunal has considered that the whole case is based on only one ground, namely, whether the Syndicate while not accepting the recommendations of the Selection Committee, without assigning any reasons has acted in an arbitrary manner affecting the rights of the respondent.

14. The Tribunal has in terms recorded the submissions made by learned advocate appearing for the University that,

> "Syndicate is not bound to give any reasons while not accepting recommendations made by any of the authority and/ or Committee of the University."

> "that no provision is being pointed out by the applicant to the effect that the Syndicate is bound to give reasons in support of its decision."

It is important to note that after having recorded the aforesaid submissions made on behalf of the University, the Tribunal observed in para 8 of its judgement as under :

> "In the background of the facts that neither the applicant nor ld. advocate for University could point out any provision in support of their case, .. "

The Tribunal then framed a question for its consideration which is quoted in para 9 of the judgement which reads as under :

> "From the above stated submission of the party, the short question rises for the consideration of this Tribunal is whether Syndicate should give the reason while agreeing or disagreeing with the recommendation made by the Selection Committee for some post in the University or not?"

The Tribunal has also recorded in para 11 that,

> " .. It is also stated by the

applicant in his evidence by saying that he agrees that it is the discretion of the Syndicate either to accept the recommendation or not to accept the recommendation, but for that the Syndicate must give reasons. .. .."

In para 12, the Tribunal has recorded that,

" .. He has agreed that in all cases, Syndicate is not giving reasons for not accepting the recommendation of the Selection Committee. .. "

15. The Tribunal after recording, as aforesaid, proceeds to say that, "few questions were put by this Tribunal to the applicant to reach to some more true and to find out the truth." The Tribunal has recorded that, "the applicant has stated before this Tribunal that in the University for making application in open category post and for making application in reserved category post belonging to non teaching staff, there are separate application forms." When the form filled in by the respondent was produced before the Tribunal, the respondent had admitted its genuineness and the correctness of the form filled in by the respondent. The form was the one which was to be filled in for reserved category. Thus, it is clear that the applicant had applied for reserved post by filling up the form especially kept for reserved candidates. But thereafter the Tribunal brushes aside this factual aspect by saying that,

".. .. Of course, this is not the subject matter to be answered by this Tribunal at this stage but fact remains as it is on the record of the case which are helpful to this Tribunal to reach to the proper and true conclusion and therefore, these are referred to apart from the facts that even though applicant was called in interview and his selection was made by the Selection Committee on the post of open category candidate.

16. It is also interesting to note that the Tribunal has discussed this point further in para 13 of the judgement wherein the submission of the present respondent (applicant) was that though the form filled in by the applicant was that of reserved category the same could have been considered by the University for the post of open category. Said contention was replied by the University by saying that this is not permissible and as

and when any candidate belonging to reserved category seeks an application form from the University on production of caste certificate, one gets the same at a concessional rate in comparison to the candidates of open category. This is again is brushed aside by the Tribunal by saying that,

> ".. But as aforesaid, I am not giving my any of the findings on merits qua that as I have kept the said question open as, in my opinion, the said does not require any consideration at this stage, as the same is being even not canvassed by the University in support of its defence."

This aspect is required to be discussed in this detail because a colour was sought to be given by the present respondent that as the petitioner belongs to scheduled caste and was selected against the post of open category by the Selection Committee, was not appointed by not accepting the recommendations of the Selection Committee by the Syndicate and the reasons conveyed to the respondent by some of the Syndicate members (details of whom are kept back) was that as the applicant is belonging to scheduled caste category and is selected on open category post, he may not get appointment. The respondent canvassed that he was informed that as the post is belonging to open category and he is belonging to scheduled caste, he is going to have future chances, and in that manner by giving appointment order to him why the post of open category is to be wasted. The Tribunal is also moved by this submission and has therefore said in para 6 that,

> "Applicant vehemently submitted that his whole case is based on only this one ground. No other ground is being canvassed before me by the applicant."

17. Thereafter, the Tribunal has proceeded further to consider various aspects of the matter and has thereafter reached to the conclusions which are already set out hereinabove. From the aforesaid discussion it is clear that the Tribunal has erred in coming to the conclusion that,

> ".. .. the Syndicate is an executive authority and is bound to act within the four corners of law by giving justification to its action, in terms by disclosing in black and white and by giving reasons for the same. .. "

18. Had the Tribunal kept in mind the composition of the Syndicate, which is laid down in subsection (2) of section 23 of the M.S. University Baroda Act, 1949, which is already reproduced hereinabove, the Tribunal could have avoided this mistake.

The Tribunal has also erred in observing that,

> ".. .. This may amount of giving licence of arbitrariness to the Syndicate if the same kind of tendency of the Syndicate is upheld for the simple reason that whenever Syndicate find something, Syndicate will record the reasons and will not agree with the recommendation of the Committee and whenever Syndicate does not find anything, in short, having no reason not to agree with the recommendation, but even though Syndicate desires not to agree for any reason or for some ulterior motive or otherwise, then no reasons will be given. .. .."

19. The Tribunal has missed an important aspect of the matter, namely, the Syndicate is not an individual and it is one of the authorities of the University. Section 23(1) provides that the Syndicate shall be the executive authority of the University. Subsecs.2, 3, 4 and 5 provide as to how the Syndicate is constituted, what is the term of the office of the elected members of the Syndicate, and in case when the elected member remains absent what is to be done. The Tribunal has erred in applying its logic to the decision of the Syndicate like to any other executive authority. It appears that the Tribunal has erred on account of use of the phrase that, "the Syndicate is an executive authority" of the University. What is observed by the Tribunal may be true when it comes to an executive authority, who is an individual; who may have some personal likings or dislikings; who is susceptible to some extraneous considerations. Had the Tribunal given an anxious thought to the nature of the Constitution of the Syndicate, which is a body of persons, the Tribunal might have avoided the error, which it has committed. The Tribunal was conscious of the fact that the Syndicate includes nearly two dozen candidates from different fields to constitute the authority being Syndicate. When constitution of the Syndicate is known to the Tribunal, the observations made by the Tribunal against the Syndicate are wholly unwarranted.

20. The Tribunal has also erred in holding that the

Syndicate is under an obligation to give reasons for its decision though no provision is shown to that effect. The direction issued by the Tribunal to consider the recommendation of the Selection Committee de novo is wholly unwarranted in absence of any legal duty duly cast upon the Syndicate by law. The Tribunal has also erred in not accepting the contentions raised on behalf of the University that it is absolutely within the discretion of the Syndicate either to give or not to give reasons and that in absence of any specific provision, the Syndicate cannot be compelled to do so.

21. In view of the aforesaid discussion, the judgement and order dated 12.6.1999 passed by the Tribunal in Application No.3 of 1999 is hereby quashed and set aside. Rule is made absolute with no order as to cost.

(Ravi R. Tripathi, J.)

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